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Situation of human rights in Cambodia

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly the report of his Special Representative for human rights in Cambodia, Peter Leuprecht, pursuant to General Assembly resolution 55/95 of 4 December 2000.

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* A/56/150.

** In accordance with General Assembly resolution 55/222, section III, paragraph 10, this report is being submitted on 26 July 2001 so as to include as much updated information as possible.

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Report of the Special Representative of the Secretary-General for human rights in Cambodia

Summary

The present report is submitted in accordance with General Assembly resolution 55/95 of 4 December 2000 and is based on the Special Representative's latest two visits to Cambodia, in February and June 2001, where he met with various government officials and representatives of the non-governmental organizations and donor communities.

The Special Representative wishes to reiterate his conviction that four fundamental evils, all closely interrelated, continue to affect Cambodian society: poverty, violence, corruption and lawlessness. In the present report, the Special Representative will focus on a number of specific issues: land rights, natural resources, demobilization of armed forces, the judiciary, prison conditions, mob killings, commune elections, human trafficking, Vietnamese refugees, the Khmer Rouge Tribunal and labour issues.

Land-grabbing and illegal evictions have become major problems in Cambodian society. The absence of clear land titles and a proper system for title registration is a serious cause for concern. The Special Representative visited two villages in the Thai/Cambodian border area of Poipet where land disputes are affecting the lives of many and contributing to the precariousness of their situation. In recent years, the value of land in Poipet town has increased enormously owing to the prospect of building casinos that cater to Thai visitors. This has brought about many cases of land-grabbing and forced evictions, as well as the displacement of large populations. The Special Representative wishes to draw attention to the dire living conditions of relocated people, as well as to the fraudulent and unlawful manner in which evictions take place.

Natural resources are in high demand in Cambodia. Forestry concessions and commercial fishing lots are being allocated to companies without regard for the traditional use of such lands and waters by villagers or the negative effects of such concessions on the environment. In addition, although the Government of Cambodia has made significant progress in forestry reform in recent years, corruption is still prevalent in the logging industry and undermines the success rate of reform. In relation to fisheries, while commercial fishing lots have been allocated to family-scale fishing by the enactment of sub-decrees, these have not been properly implemented at the local level, which has led to violence and disregard for the plight of the poor.

The Special Representative welcomes the fact that demobilization of armed forces has been at the heart of the Cambodian Government's reform agenda and its fight against poverty. He encourages the Government and all its partners to properly plan and carry out the full-scale demobilization programme based on the lessons learned during the pilot project. Moreover, disarmament should be integrated as a core element of the demobilization process; weapons should be turned over to the military, catalogued and destroyed to ensure that they are not recirculated.

The Special Representative is concerned about the slow implementation of existing laws, the prevalence of corruption and impunity, and the lack of

independence of the judiciary in Cambodia. In order to aspire to further independence and impartiality on the part of the judiciary, significant reform must be made to the Supreme Council of the Magistracy to guarantee its independence and legitimate authority. The Special Representative also notes that the Judicial Mentor Programme, implemented by the Office of the United Nations High Commissioner for Human Rights in Cambodia (OHCHR/Cambodia), has proved to be extremely valuable for the development of the judiciary.

Prison conditions continue to raise serious concern. In particular, health care for prisoners is hampered by the lack of appropriately trained nurses and doctors, the insufficiency of resources and medical supplies, and the poor sanitation and overcrowded condition of prison cells, which contributes to the spread of infectious diseases. The Special Representative is also concerned about the continued prevalence of corruption in the prison system.

The Special Representative welcomes the adoption of the laws on commune elections and commune administration, but raises some concerns with regard to the composition of the National Election Committee (NEC) and the political climate leading up to these first elections at the communal level. Indeed, there is a lingering concern that the NEC will not be sufficiently independent to ensure the conduct of free and fair elections. A further concern is that appropriate and accessible voter information may not be adequately available or distributed.

In Cambodia, despite efforts on the part of the Government and various non-governmental organizations, the trafficking of women and children for sexual or labour exploitation remains an issue of grave concern. Poverty is an important factor influencing the decision of many to leave home in search of work in urban Cambodia and Thailand, as is the high demand for women and children as workers, prostitutes and beggars. There is an urgent need to address the issue of trafficking and, in doing so, to deal with all aspects of this disturbing problem: poverty, lack of protective legislation for women and children, and weakness of the judiciary and of the law enforcement system, and also an urgent need for the provision of adequate assistance to the victims.

Since February 2001, hundreds of people have fled Viet Nam, reportedly because of fear of persecution. The Cambodian Government has accepted to allow those granted refugee status by the United Nations High Commissioner for Refugees (UNHCR) to remain in the country on a temporary basis. In the meantime, UNHCR must obtain a commitment from the Vietnamese Government regarding the reintegration and safety of the Vietnamese refugees concerned.

The Special Representative follows with interest the developments regarding the establishment of the Special Tribunal to try those responsible for crimes committed during the period of the Democratic Kampuchea regime. He continues to advocate that the preconditions for healing and consolidating peace include justice and the discovery of truth.

I. Introduction

1. The present report is submitted in accordance with General Assembly resolution 55/95 of 4 December 2000. As set out in Commission on Human Rights resolution 1993/6 of 19 February 1993 on the situation of human rights in Cambodia, the tasks of the Special Representative are: (a) to maintain contact with the Government and people of Cambodia; (b) to guide and coordinate the United Nations human rights presence in Cambodia; and (c) to assist the Government of Cambodia in the promotion and protection of human rights.

2. This is the Special Representative's first report to the General Assembly. Following the Special Representative's first visit to Cambodia, a report was drafted in December 2000 and submitted to the Commission on Human Rights in April 2001 (E/CN.4/2001/103). In the opinion of the Special Representative, the Government of Cambodia's response to this report before the Commission was mature, responsible and constructive, and represents a good basis for the continuation of a fruitful dialogue between the Government, civil society, the international community and the Special Representative.

3. On 25 April 2001, the Commission on Human Rights adopted resolution 2001/82 on the situation of human rights in Cambodia. In that resolution, the Commission requested the Secretary-General, through his Special Representative for human rights in Cambodia, to assist the Government of Cambodia in ensuring the protection of the human rights of all people in Cambodia.

4. This report will build upon the Special Representative's earlier report to the Commission on Human Rights. The Special Representative will, as a general rule, attempt to avoid repeating what he has stated in previous reports. His approach and methodology remain unchanged and can be summarized in five points:

(a) He has profound respect for, and sincere sympathy with, the Cambodian people;

(b) His intention is to listen to, and to engage in a frank and fruitful dialogue with, all sectors of Cambodian society;

(c) His approach to human rights is global and comprehensive, thus including civil, political, economic, social and cultural rights. He intends to pay serious attention to poverty as a fundamental human rights issue;

(d) He emphasizes the responsibility not only of the Cambodian society and authorities, but also of the international community for the realization of human rights in the country;

(e) He sees his role as part of a collective effort. He therefore intends to cooperate closely with international organizations, institutions and agencies, Governments, the Association of South-East Asian Nations (ASEAN), the European Union (EU), international and national non-governmental organizations and all sectors of Cambodian society.

5. The Special Representative continues to appreciate the spirit of openness and cooperation shown by the Cambodian authorities.

II. The Special Representative's activities and sources

A. Second visit to Cambodia, 16 to 23 February 2001

6. The Special Representative carried out his second visit to Cambodia from 16 to 23 February 2001. The objective of this visit was to follow up on his preceding visit of November 2000 and to update his first report in preparation for its presentation to the Commission on Human Rights.

7. During this visit the Special Representative had an audience with the King of Cambodia, His Majesty King Norodom Sihanouk. He also met with several senior government representatives, including the Minister for Foreign Affairs and International Cooperation, the Minister of Justice, the Deputy Prime Minister and Co-Minister of the Interior, the Minister of Women's and Veteran's Affairs, the President of the National Assembly and the Chairman and members of the Cambodian Human Rights Committee. Moreover, meetings were held with the Director of the National Police, the Cambodian National Council for Children, and the Supreme Council of the Magistracy.

8. The focus of these meetings encompassed the five main themes addressed by the Special Representative during his first visit to the country, namely:

(a) Eradication of violence;

(b) Rule of law;

(c) Domestic implementation of international human rights treaties to which Cambodia is a party;

(d) Poverty issues and economic and social rights;

(e) Situation of women and children.

9. In addition, the Special Representative also discussed the issue of the Khmer Rouge Tribunal and the upcoming commune elections. With the Minister for Foreign Affairs and International Cooperation, the Special Representative discussed the pending signature of the Memorandum of Understanding between the Royal Government of Cambodia and the Office of the United Nations High Commissioner for Human Rights, and new formulations for the Memorandum were suggested and negotiated (see below, sect. III).

10. The Special Representative also consulted with leaders of different political parties, representatives of various national and international non-governmental organizations, representatives of the legal community, and members of the donor and diplomatic community. During these meetings attention was given to issues such as the upcoming commune elections, land issues and the draft land law, impunity and corruption, the lack of independence of the judiciary, the rights of women and children, and the Khmer Rouge Tribunal. In addition, a visit was also organized to the Documentation Centre of Cambodia, where the Special Representative was briefed on the state of the Centre's data collection and the progress of its work.

11. In order to further acquaint himself with the realities of the human rights situation in Cambodia, the Special Representative intends to visit one province during each of his trips to the country. Accordingly, during his second visit the Special Representative travelled to the Province of Battambang, where he met with the Governor, the Police Commissioner, the Gendarmerie, the President and the Chief Prosecutor of the Battambang Court, as well as with the Provincial Office Network of the Office of the United Nations High Commissioner for Human Rights in Cambodia (OHCHR/Cambodia) and various non-governmental organizations active in the province.

12. At his request, the Special Representative visited two detention centres: Prey Sor prison in Phnom Penh, and the Battambang prison. In addition, he met with the Director of Prisons, with whom he had a constructive, open and frank discussion about the general conditions in Cambodian prisons.

13. In Prey Sor prison, the Special Representative requested a private meeting with some of the members of the Cambodian Freedom Fighters (CFF) who had been arrested in connection with the events of 24 November 2000 (see document E/CN.4/2001/103, paras. 29 and 30). In particular, he was permitted to conduct a private interview with Mr. Kiri Kim and several other leading figures of the CFF movement. Since the Special Representative's visit, some of those arrested and suspected of being members of the CFF have been tried and sentenced. The proceedings were marked by numerous irregularities, such as the illegal length of the defendant's pre-trial detention and a lack of access to defence lawyers and family members. The Special Representative hopes that such irregularities will be avoided for the trial of other persons suspected of being members of the CFF.

14. In the Battambang prison the Special Representative noted the limited space available to the prisoners, the lack of appropriate health care, the proximity of minors to adults and of women to men, as well as the complete lack of resources for the care of the very young children of detained women.

B. Third visit to Cambodia, 22 to 28 June 2001

15. The Special Representative carried out his third visit to Cambodia from 22 to 28 June 2001. This visit focused mainly on land issues, demobilization of armed forces, human trafficking, commune elections, corruption, prison health conditions, the state of the judiciary, instances of mob killings and abuses by police, the situation of asylum-seekers from Viet Nam, and the Khmer Rouge Tribunal.

16. Once again during this third visit, the Special Representative had an audience with His Majesty King Norodom Sihanouk. He also met with the Prime Minister, the Minister in charge of the Council of Ministers, the Deputy Prime Minister and Co-Minister

of the Interior, the Minister of Justice, the Minister of Labour, the National Assembly Legislative Committee, the President of the Supreme Court, the Cambodian Human Rights Committee, the Director of the National Police, the General Director of the General Department of Administration and the Acting Chief of the Prison Department in the Ministry of the Interior.

17. In addition, the Special Representative consulted with leaders of the civil society, members of the donor and diplomatic community, and representatives of United Nations agencies. He also met with the Dean of the Law Faculty and gave a lecture to students at the University of Phnom Penh.

18. During his third visit to the country, the Special Representative carried out a short trip to the Province of Banteay Meanchey, where he focused on land issues in the Thai-Cambodian border area of Poipet, as well as the prevalence of human trafficking cases in that region. He had the opportunity to visit two villages facing serious land-related difficulties, an issue that will be further discussed in section II of this report. He also met with representatives of the provincial office of OHCHR/Cambodia, non-governmental organizations working in Banteay Meanchey, the provincial governor, the chief of land management, the provincial police commissioner, the Children's Rights Committee, and the Provincial Court. He also visited the provincial prison as well as the Cambodian Women's Crisis Centre.

19. Following this third visit in Cambodia, the Special Representative spent a day in Bangkok in order to meet with and brief the diplomatic community operating in the region as a whole. In particular, he met with ambassadors of member States of EU, as well as with the Ambassador of Norway. Consultations were also held with the Executive Secretary of the Economic and Social Commission for Asia and the Pacific (ESCAP), the Regional Representative of the United Nations Children's Fund (UNICEF) and representatives of the regional office of the International Labour Organization (ILO).

20. Prior to this third mission, the Special Representative followed with interest the Consultative Group Meetings held in Tokyo in early June. The results of these meetings appear to be satisfactory and in line with the first recommendation of the Special Representative's first report: namely, that the international community should increase its assistance to Cambodia, and that protection and promotion of human rights should be properly taken into account in all assistance programmes. It became clear at the Tokyo meeting that the donor community is increasingly eager to see concrete results from the government reform programmes and that they will determine the degree of support in the future.

III. Major developments and human rights issues of concern

21. During his second and third visits, the Special Representative was attentive to the occurrence of any developments in the field of human rights since the completion of his report to the Commission on Human Rights in December 2000. He acknowledges, however, that significant change can be expected to occur only in the medium and long term.

22. In this report, the Special Representative will focus on a number of specific issues. Before doing so, however, he wishes to reiterate his conviction that four fundamental evils continue to affect Cambodian society: poverty, violence, corruption and lawlessness. Prime Minister Hun Sen appeared to agree with this analysis in the course of the meeting he had with the Special Representative on 26 June 2001. It is becoming increasingly clear to the Special Representative that these four evils are closely interrelated. Addressing each and all of them is essential to the development in Cambodia of a peaceful and democratic society where the human rights of all peoples are respected. It should be acknowledged that in recent years the country has undoubtedly made some progress. For example, Cambodia is today more peaceful and secure than it has been throughout most of its recent history. Nevertheless, it is indisputable that an enormous amount of work remains to be done — and must be done — by the Cambodian authorities and society in order to overcome the country's tragic heritage. In this undertaking, Cambodians must be able to rely on the active solidarity of the international community.

A. Land issues

1. Land disputes

23. Land disputes are pervasive in Cambodian society. In particular, land-grabbing and illegal evictions have become major problems. For the most

part, they can be attributed to the absence of a proper system for registration of land titles. Indeed, the lack of proper title documents complicates the resolution of disputes, with the result that land disputes tend to be resolved according to criteria other than the objective merits of the case. While some efforts have been made towards the resolution of land disputes, corruption, impunity and intimidation on the part of influential and powerful people, including members of the armed forces and local government officials, continue to represent serious obstacles to the achievement of justice in this area.

24. The cost of obtaining title documents has become a bar to their acquisition in many cases. The Special Representative observes that because the lack of such documents further complicates already confusing land disputes, a decrease in or elimination of the fees associated with acquiring proper title documents would greatly reduce the uncertainties of land dispute proceedings. Moreover, the Land Titles Office should accelerate the process by which titles are granted.

25. The provincial and national land disputes settlement committees would benefit from a strengthened and more independent judiciary. Indeed, the committees themselves need to be strengthened in order to resolve land disputes impartially and to resist the influence of the military or powerful local officials.

26. During his third visit, the Special Representative travelled to the Province of Banteay Meanchey, where he was invited to visit two villages in the border area of Poipet. The land disputes in this region, as in many rural areas in Cambodia, are affecting the lives of many and contributing to the precariousness of their situation. In recent years, Poipet town has become a place of growing economic interest. The value of the land has increased enormously because of the prospect of building casinos that cater to Thai visitors forbidden to gamble in their own country. This has led to many cases of land-grabbing, forced evictions, and further displacement of a population which is itself substantially composed of previously internally displaced people or returnees.

27. One of the two villages visited by the Special Representative is a shocking example of the tremendous hardship suffered owing to the forcible eviction of an entire village. Since 1991, people have settled in Psa Ra village, close to the border in Poipet. As of 1999, 810 families were living in Psa Ra, where many of them worked as goods carriers at the border. In late 1998, district authorities ordered the eviction of the families, claiming that the land belonged to two officers from Military Region 5. Owing to the villagers' protest, the eviction was halted. In 1999, representatives of the village were summoned to the Banteay Meanchey Provincial Court, where they learned that 15 people were now claiming title to the land, though only one of them, a soldier, was actually residing on the land. The villagers asked the court to dismiss those claims. They were later informed that the land title documents held by the claimants were allegedly obtained in 1993, and that they had been authorized by a person posing as the commune chief. On 24 December 1999, when villagers organized a meeting to discuss the land problems, the soldier who had claimed title to the land threw a hand grenade at the group, killing two and seriously injuring four others. The incident was reported to provincial authorities but no action was taken against the perpetrator. The Court attempted to conciliate the case in January 2000, but the villagers refused the compensation, which they deemed to be too low. The Court then ordered that the 810 families remove their houses from the land. The village did not appeal this order as its representatives had apparently been bribed by the claimants. In June, the forced eviction began and the houses were destroyed despite the lack of an appropriate relocation site for these families. More than half the families were moved to a new location, O'neang, 10 km outside Poipet, which was the area visited by the Special Representative. This move, however, took place before the land was properly demined, and access roads to the area built. In addition, water was not available at the relocation site. A large group of local and international organizations working in Banteay Meanchey, including the OHCHR/Cambodia, wrote a letter of concern to the provincial authorities urging them to ensure adequate living conditions at the relocation site. Nevertheless, it became necessary for various organizations to be brought in to help demine and develop the new area. The Special Representative has seen with his own eyes that mine clearance continues in the middle of the poverty-stricken village. A non-governmental organization has constructed large ponds in order to accumulate rainwater, as no other water source is available to this relocation site. The intended use of the land in Psa Ra is unclear; OHCHR/Cambodia has received information that the authorities need the land

for public purposes, but there are also reports that it may be used for business ventures. At present, this land is unoccupied and virtually unaltered.

28. The Special Representative wishes to draw attention to the dire living conditions of these relocated people, as well as the fraudulent and unlawful manner in which the eviction took place. The particular situation of these families needs immediate attention; it should serve as an example of the urgent need for more equitable land dispute settlements, proper land title documents, and proper planning when relocation is inevitable.

29. The second village visited by the Special Representative was that of Samaki Meanchey. A first group settled on this land in 1992, and a second, larger group settled in 1997. The villagers have invested considerable effort in demining and developing their land. Recently, however, commune authorities have claimed that the land of Samaki Meanchey and three neighbouring villages, housing 903 families, belongs to 34 other persons. Among them are some high-ranking government officials, some of whom have since stated that they are not involved in the matter. This could lead to the conclusion that the land titles were obtained by fraud. The villagers are now living under constant threat of eviction and the village leaders have been intimidated and wrongfully arrested. While the living conditions on the disputed land are better than those of a potential relocation site, the villagers are nevertheless in need of assistance. However, non-governmental organizations are reluctant to improve the state of the land until the villagers' right to live there is secure. This case is pending before the court in Banteay Meanchey. The Special Representative requested that the Provincial Court carry out a serious investigation into the legality of the documents presented by the 34 claimants to the land, and that a field visit be conducted in order to assess the situation.

30. The Special Representative brought the cases of both villages in Poipet to the attention of Prime Minister Hun Sen in the course of their meeting on 26 June 2001. He has followed up their discussion with a letter to the Prime Minister detailing the various aspects of these two cases.

31. The Special Representative is concerned about the blatant use of fraud and intimidation by local officials and others acting on behalf of the military in obtaining land title documents for an area of about 1,200 hectares of land in Ratanakiri Province. Indigenous minorities have inhabited the land and practised swidden cultivation for generations. Members of this population, most of whom are unable to read or write Khmer, were forced to thumbprint documents under the pretext that their villages would be developed. Instead, they were given a few kilograms of salt and were threatened with eviction should they refuse to thumbprint the documents. Only later did they realize that 900 of them had thumbprinted requests for land titles and sale agreements for their land. Despite overwhelming evidence of irregularities in the process, the Provincial Court decided that the documents were valid. The Special Representative encourages the Court of Appeal, where the case is pending, to seriously consider the fraudulent methods that were used to deprive the indigenous minorities of their means of subsistence.

32. The Special Representative is seriously concerned by the multiplication of land disputes and the resulting tension, hardship, violence, and human suffering. He fears that, unless the authorities come to grips with these issues, there is huge potential for new conflict and civil unrest in Cambodia. An effective, efficient and transparent land registration system must be set up. Impartial and independent land disputes settlement committees must be strengthened and given authority over all land title claimants in order to adjudicate fairly and without undue influence on the part of people in positions of power such as members of the armed forces or local authorities.

2. Natural resources

33. Natural resources are in high demand in Cambodia. Forestry concessions and commercial fishing lots are being allocated to companies without regard for to the traditional use of such lands and waters by villagers and the negative effects of such concessions on the environment.

34. The Special Representative notes with satisfaction that Prime Minister Hun Sen supports the recognition of communal land titling for indigenous populations.

35. The Special Representative welcomes the drafting of the Forestry Law and encourages consistency and coherence between it and the Immovable Property Bill. Furthermore, he notes the importance of compliance

with environmental laws on the part of developers and in the process of granting concessions.

36. Although the Cambodian Government has made significant progress in forestry reform in recent years, corruption is still prevalent in the logging industry and undermines the success rate of reform. Much of the illegal logging throughout the country is conducted by concessionaires and the military.

37. In response to the draft Forestry Law, the Special Representative notes that non-governmental organizations have commended the Government for its unambiguous promotion of sustainable management of Cambodia's forests. However, in order to achieve such a goal, non-governmental organizations urge the Cambodian Government to give communities greater rights in relation to the management of forest resources and a greater share of the benefits that accrue from their sustainable utilization. Indeed, local communities not only have distinctive needs in relation to forest products, they also play a distinctive role in the management of forest resources.

38. Conflict over fisheries is widespread in Cambodia and has led to much intimidation and violence. In some cases, in the hopes of alleviating poverty, commercial fishing lots have been reallocated to family-scale fishing through the enactment of sub-decrees. However, owing to the lack of an effective rule of law, the implementation of such reforms at the local level can be a perilous and frustrating undertaking.

39. In one such case in the Province of Kompong Thom in March 2001, villagers went fishing in a lake which is part of the area returned by sub-decree to family-scale fishing. The sub-lessee, accompanied by armed men, confiscated and destroyed the villagers' fishing equipment. Villagers later returned to the same area and were charged by the sub-leasee and the owner with illegal encroachment. The villagers have still not been granted access to the released fishing areas. According to the local non-governmental organizations, this is due in large part to confusion at the local level over the reforms and to the unchecked power of vested local interests. The Special Representative welcomes the effort of the NGO Forum to organize a seminar in Kompong Thom in July 2001 bringing together the fishers, local authorities and national authorities in order to facilitate understanding of the situation and to permit the smooth implementation of the reforms. As in the case of land disputes, the strengthening of the judiciary is seen as a necessary prerequisite for the successful implementation of reforms at the local level.

B. Demobilization of armed forces

40. The Special Representative welcomes the fact that demobilization of armed forces has been at the heart of the reform agenda of the Government of Cambodia and its fight against poverty. Indeed, the Government recognizes that current national budget allocations to the military are still disproportionately high and cannot be realistically sustained or justified in the current climate of peace and political stability prevailing throughout the country. Accordingly, a demobilization pilot project was set up aiming to accomplish three objectives: (a) to reduce the size of the military by 30,000 members, thus reducing military expenditure in order to reallocate savings to social sectors; (b) to assist veterans in their efforts to reintegrate into civilian life; and (c) to help build social and economic assets in the rural areas.

41. An important preliminary step in the process was the registration of all soldiers and the issuance of identification cards to each of them. This ensured that proper verification at the point of discharge was possible so that soldiers could not benefit from the demobilization compensation package more than once. Among the 130,000 registered soldiers, it is important to note that a large proportion of them are no longer active members of the army. While these people have often been referred to as "ghost soldiers", the term is somewhat misleading as the soldiers do in fact exist and appear on the army's payroll despite the fact that they are no longer active members of the military. Many such soldiers participated in the pilot demobilization programme.

42. The pilot demobilization programme was conducted by the General Secretariat for the Demobilization of Armed Forces, which established discharge centres in four pilot provinces with the help of the donor community and non-governmental organizations; 1,500 soldiers participated in the pilot project. At the point of discharge, they were given reintegration packages (household kits), training sessions to facilitate their reintegration, medical assessments, and a discharge certificate. The main challenge encountered was the delay in obtaining full funding for the discharge operation. It will be

important to ensure that all financing is available and in place before launching the full programme.

43. In terms of the veterans' reintegration into civil society, it must be noted that the large majority of soldiers demobilized so far were already settled in rural communities. This may not be the case in the full-scale demobilization programme. The veterans nonetheless required, and relied on, the reintegration packages in order to compensate for the military stipend they had continued to receive and depend on over the years. One lesson learned from the pilot project is that the duration and form of the reintegration assistance package should be more clearly defined to veterans in order to allow them to make better investment decisions.

44. The Special Representative encourages the Government and all its partners to properly plan and carry out the full-scale demobilization programme based on the lessons learned through the pilot project. Donors are encouraged to commit and follow through on their pledged assistance to the programme and to do so in a timely manner. Given that the aim of such an endeavour is the reduction of military spending, verifications should be made to ensure that such reductions do in fact reflect the decrease in number of soldiers achieved through the demobilization programme.

45. Moreover, disarmament should be integrated as a core element of the demobilization process; weapons should be turned over to the military prior to entry into civilian discharge centres. Such weapons should be catalogued and destroyed to ensure that they are not recirculated because of insufficient storage facilities and control mechanisms. This preliminary step to the demobilization programme is essential to reduce successfully the number of weapons in society and to minimize the public perception that demobilized soldiers may pose a security risk to local communities.

C. From "lawlessness" to rule of law

1. State of the judiciary

46. As stated in his report to the Commission on Human Rights (E/CN.4/2001/103), the Special Representative is concerned about the slow implementation of existing laws, the prevalence of corruption and impunity, and the lack of independence of the judiciary in Cambodia. However, he commends the efforts made by the Government of Cambodia to complete the body of fundamental legal texts. He encourages the enactment of particular laws such as the Land Law, the Forestry Law, the Fishery Law, the Penal Code, the Code of Criminal Procedure, the Civil Code and the Code of Civil Procedure. He calls on the Government and the Parliament to ensure that all legislation is in accordance with international human rights standards and that it forms a coherent and consistent whole.

47. One area of concern is the dissemination of legal texts. While the Special Representative recognizes the efforts made in this regard, he notes the need for further work in terms of enhancing citizens' understanding of their rights and obligations under the law.

48. The issue of the rearrest order given by the Prime Minister on 3 December 1999 was raised by the Special Representative in his report to the Commission on Human Rights at its fifty-seventh session (E/CN.4/2001/103, para. 50). A complaint filed by the victims regarding the unconstitutionality of the rearrests was forwarded by the Phnom Penh Municipal Court to the Supreme Court. The Supreme Court, however, has yet to forward the complaint to the Constitutional Council, although according to the law it must do so within 15 days of receiving the complaint. Although the release of 24 persons was announced, this cannot redress the illegality of the original order. The Special Representative therefore reiterates that the rule of law should not be undermined while addressing the issue of rearrests.

49. The Special Representative was made aware of numerous examples of ministerial circulars constituting executive intervention, which is clearly contrary to the principles of independence of the judiciary and separation of powers.

50. Another regrettable practice is that of "out-of-court settlements" under which the perpetrator of a crime, in order to avoid prosecution and often with the help of the police, pays compensation to the victim.

51. OHCHR/Cambodia continues to implement the judicial mentor programme to ensure the proper functioning of the judiciary with safeguarding of international human rights standards. The Special Representative supports this endeavour, which has proved to be extremely valuable for the development of the judiciary. The judiciary continues to suffer from a shortage of formally trained judges and prosecutors, as

well as from its lack of independence from the executive branch of government. Moreover, the budgetary allocation to the judiciary is insufficient, and suggests a certain lack of commitment on the part of the Government towards the task of strengthening the judiciary. Though aware of the scarcity of state resources, the Special Representative is struck by the extremely poor condition of court buildings and their dire lack of basic equipment, which compares unfavourably with that of other institutions such as the police. This further indicates the low rank of the judiciary in the hierarchy of state institutions.

52. As stated by the Special Representative before the Commission on Human Rights on 24 April 2001, he believes that the judiciary needs to be reformed from top to bottom. At the top, significant reform must be made to the Supreme Council of the Magistracy to guarantee its independence and legitimate authority. Specifically, the training of judges and their political impartiality must be ensured. The Special Representative notes that political will for such reform is essential and must entail a reallocation of budgetary expenses.

53. The Special Representative believes that it is necessary to bring new life, i.e., young trained lawyers, into the judiciary and the bar association.

54. Given the particular needs of minors, the Special Representative urges the competent Cambodian authorities, with assistance from the international community, to adopt and implement a juvenile justice system in line with basic human rights requirements.

2. Prison conditions

55. The Special Representative notes that the conditions of detention in Cambodian prisons are gravely inadequate. During his last two visits to the country, he focused on prison health conditions, the problem of excessive pre-trial detention, and the issue of corruption at various levels within the prison system.

56. The provision of health care to prisoners is the responsibility of both the Ministry of the Interior and the Ministry of Health. Unfortunately, these responsibilities are not clearly defined and there is a lack of cooperation between the two Ministries. Some of the obstacles encountered include the lack of appropriately trained nurses and doctors, the insufficiency of resources and medical supplies, and the absence of properly kept medical records for prisoners. In addition, poor sanitation and the overcrowded condition of prison cells contribute to the spreading of contagious illnesses such as tuberculosis and skin diseases. Moreover, many prisons lack access to transportation for the transfer of seriously ill prisoners to hospitals.

57. When visiting the prison in Banteay Meanchey, the Special Representative was made aware of the lack of basic resources, including soap for washing clothes and for personal cleaning. In addition, in this prison inmates are only permitted to leave their cell for 15 minutes per day in order to shower and to exercise. The prison director explains that he has too few security guards to protect and control the prisoners. Although the national budget for prisons allocates a certain amount for the purchase of sporting equipment, in none of the prisons visited by the Special Representative thus far has there been any sign of such equipment. It would thus appear that this budgetary allocation exists only on paper and is not actually transferred to the prison directors for such use. Similarly, while there are budgetary allocations for educational facilities and programmes, they appear to be nearly non-existent.

58. Excessive pre-trial detention remains a serious and pressing issue in Cambodia. In Banteay Meanchey, the insufficient number of judges and prosecutors exacerbates the problem. The Special Representative is encouraged that additional judges and prosecutors were sent from Phnom Penh to work at the Banteay Meanchey court.

59. In terms of access to prisoners, the Special Representative is concerned about the difficulties faced by the Provincial Office of OHCHR/Cambodia as well as by local non-governmental organizations in their efforts to monitor conditions of detention. He stresses the importance of private interviews with prisoners in order to assess whether they have been maltreated or tortured by any law enforcement officials at any point during their arrest or detention. Monitors would also benefit from access to individual prison cells as well as to detention rooms in police stations.

60. Corruption continues to be prevalent in the prison system. The Special Representative would like to draw particular attention to the practice of extortion of family members by prison guards when the former come to visit a prisoner. Although on certain days family visits are authorized by the prison rules, some

families have nonetheless been required to pay prison guards or officials for such lawful access. Corruption is also an issue when prisoners need access to food supplements, clean water and medical care, with the result that prisoners or their family members are most often required to pay money to obtain these basic resources.

61. The lack of proper separation of prisoners remains an issue of great concern to the Special Representative. While in most cases women are placed in separate cells from men, they are not prevented from interaction with men outside of the cells. Minors and adults are very often kept together, both in the case of women and men, and pre-trial detainees are kept in the same cells with convicted prisoners. Moreover, in several prisons, very young children are living with their detained mothers without any additional food or water allowance being provided through the prison system. These children must depend on the humanitarian assistance offered by local non-governmental organizations, and very often they lack access to basic food and medicines.

3. Police violence and mob killings

62. The Special Representative commends the cooperation of the police department in its efforts to investigate cases of violence committed by police. In this report he wishes to draw particular attention to the problems concerning violence committed by border police in Poipet. In one case, for example, a man was found dead in the house of the deputy chief of the border police force. The Special Representative welcomes the investigation in this case and advocates stricter control of the activities of the border police in Poipet by the Ministry of the Interior.

63. Another issue of concern is that of mob killings. Cases have been reported of victims having been arrested and detained by the police and then returned to the place of the incident, where they were released to the crowd and beaten to death while police looked on without intervening. The number of such incidents in recent years is alarming and the Special Representative hopes that proper attention will be given to these cases in order that those responsible may be identified and the courts may be seized of such cases. Moreover, he hopes that all possible measures will be taken to prevent the reoccurrence of such incidents.

D. Commune elections — a further step towards the consolidation of democracy?

64. The commune elections are scheduled for February 2002. Political parties, the National Election Committee (NEC), the United Nations, and many local and international non-governmental organizations are focusing their attention on the process, expecting from it a further step towards the consolidation of democracy. The Special Representative welcomes the adoption of the laws on commune elections and commune administration, but he raises some concerns with regard to the composition of the NEC and the political climate leading up to these first elections at the communal level.

65. Indeed, at the writing of this report, the composition of the NEC is an issue of concern. While it is agreed that the NEC should be composed of members of all three elected parties, no representative of the Sam Rainsy Party has been appointed to the Committee. The National Assembly voted against the appointment but the Government assured the Special Representative that the question would be put to a further vote soon. In the meantime, there is some concern that the NEC is making decisions, for instance with regard to the composition of Provincial Election Committees, without any input from the Sam Rainsy Party. Furthermore, there is a lingering concern that the NEC will not be sufficiently independent to ensure the conduct of free and fair elections.

66. In terms of the current political climate, there is serious concern that candidates are targets of violence, harassment and intimidation. The Special Representative commends the parties in power, the Cambodian People's Party (CPP) and the Front uni national pour un Cambodge indépendant, neutre, pacifique et coopératif (FUNCINPEC), for their negotiated agreement to abstain from all acts of violence in relation to the commune elections. He hopes that all other parties that present candidates will benefit from a non-violent approach to commune elections. However, the Special Representative is concerned about the killing of a Sam Rainsy Party District Council member in Kompong Speu Province on 30 June 2001 and the effect that incident may have on the election process. He welcomes the arrest of two people suspected of the killing. The Special Representative commends the March 2001 conviction

of a commune chief and three accomplices to periods of imprisonment ranging from 12 to 17 years, for the execution in June 2000 of a FUNCINPEC member and his wife in Kampot Province.

67. Another concern of the non-governmental organization community is that of access to media in order to ensure that voter education be conducted efficiently and independently. The Special Representative encourages the United Nations agencies, as well as international and local non-governmental organizations to cooperate in their various approaches and focuses for the dissemination of voter information and the monitoring of both the campaign and the election itself. Moreover, he calls for the participation of the international and donor communities to help finance such activities.

E. Human trafficking

68. Trafficking of women and children has received increased international attention in recent years. In Cambodia, despite efforts on the part of the Government and various non-governmental organizations, the trafficking of women and children for sexual or labour exploitation remains an issue of grave concern. The Special Representative is deeply troubled by this phenomenon and, in particular, by the very young age of many of its victims.

69. More and more women are leaving their homes and villages in the countryside in search of work in urban Cambodia and Thailand. Poverty is an important factor influencing this decision. In addition, the high demand for women and children as workers, prostitutes and beggars, and the lure of perceived wealth on the other side of the border, has contributed to the increased flow of women and children, many of whom are trafficked or deceived and forced to work under appalling conditions.

70. The Constitutional Law of Cambodia explicitly prohibits the trafficking of human beings and the 1996 law on Suppression of Kidnapping, Trafficking and Exploitation of Human Beings stipulates criminal punishment for such actions. However, the law has not been effectively implemented and has not had a significant impact on the suppression of trafficking.

71. While visiting the Province of Banteay Meanchey, the Special Representative met with staff of the Cambodian Women's Crisis Centre who work closely with women and children who are victims of trafficking, rape, and domestic violence. Their approach is to rescue the victims and offer them shelter and vocational training as well as counselling and support. They also conduct investigations into the particular cases and, when possible, work towards the reintegration of the women and children into their families. The Special Representative was shocked and disturbed by the very young age of many of the victims.

72. There is an urgent need to address the issue of trafficking. To do so, several actions have to be taken concurrently. First, the issue of poverty must be addressed in order to understand its effects on women and children. Secondly, legislation for the protection of women and children must be enacted and measures taken to implement such laws. Thirdly, both the judiciary and the law enforcement system must be strengthened and problems of administration of justice, such as corruption, need to be tackled. Finally, there is a need to assist the victims directly by facilitating their access to legal advice and medical assistance. The issue of human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) is of particular concern for this vulnerable group.

F. Montagnard asylum-seekers from Viet Nam

73. Since February 2001, hundreds of people from different ethnic minority groups have crossed from the Central Highlands of Viet Nam into the Cambodian Provinces of Mondulkiri and Ratanakiri. They reportedly fled Viet Nam because of fear of arrest and prosecution. Most of the claimants had taken part in land rights demonstrations in Viet Nam protesting the continuous confiscation of land by the Vietnamese Government since the end of the war in 1975. Others claim to have fled because of religious persecution; most of them belong to Protestant churches, which are forbidden by the Government. UNHCR has set up two sites in both provinces where they are processing asylum claims. A number of asylum-seekers have reported that those who were arrested in Viet Nam and later released had been tortured during their detention.

74. In order to resolve the situation, the UNHCR has been negotiating with the Vietnamese and the Cambodian Governments. The Cambodian Government has agreed to allow those granted refugee status by the

United Nations High Commissioner for Refugees (UNHCR) to remain in the country on a temporary basis. However, there are confirmed reports of a large number of Vietnamese being deported without successfully reaching the UNHCR representatives in the region. In the meantime, UNHCR must obtain a commitment from the Vietnamese Government regarding the reintegration and safety of the Vietnamese refugees concerned. The Special Representative encourages both UNHCR and OHCHR/Cambodia to continue to monitor the situation closely and to provide assistance to the asylum-seekers when needed. It is hoped that the Cambodian authorities will continue to act in accordance with their obligations under the Convention relating to the Status of Refugees and, in particular, the obligation of "non-refoulement".

G. Special Tribunal to try those responsible for crimes during the Democratic Kampuchea regime

75. The Special Representative follows with interest the developments regarding the establishment of the Special Tribunal to try those responsible for crimes during the period of the Democratic Kampuchea regime. At the writing of this report, the draft law for the establishment of this tribunal has been approved by the National Assembly, but has yet to be approved by the Senate and the Constitutional Council. Once approved, it will require final ratification by His Majesty King Norodom Sihanouk.

76. Subsequently, the Government of Cambodia will be required to provide an official translation of the law to the United Nations in order that negotiations for the establishment of the Tribunal may commence between these two parties. The United Nations has expressed frustration because of the delays in the process of promulgation of the law by the Government. The Special Representative encourages the Government to continue its cooperation with the United Nations on this issue and hopes that the country will eventually benefit from the collaboration between Cambodian and international judges and prosecutors. In the course of the Special Representative's meeting with the Prime Minister on 26 June 2001, the Prime Minister strongly emphasized that the Tribunal should be fully independent and operate without interference. The Special Representative continues to advocate that the preconditions for healing and consolidating peace include justice and the discovery of truth.

H. Labour rights

77. The current cause for concern in the area of labour rights is the frequent infringement of the workers' right to association. There is evidence that an increasing number of independent trade union members are being targeted and fired by their employers. In other cases, trade unions are being intimidated and unduly influenced by factory management, government officials and political parties.

IV. Memorandum of Understanding between the Royal Government of Cambodia and the Office of the United Nations High Commissioner for Human Rights

78. In his intervention before the Commission on Human Rights on 24 April 2001, the Special Representative mentioned that the Royal Government of Cambodia had still not agreed to sign the Memorandum of Understanding with the Office of the High Commissioner for Human Rights, in spite of General Assembly resolution 55/95 and considerable efforts by the Office and the Special Representative himself. This, he noted, is a source of regret and frustration. The Special Representative also stated at the time that the continuing refusal of the Government to renew the Memorandum of Understanding could be interpreted as a sign of reluctance on the part of the Government to cooperate with the international community, and that that could tarnish its international reputation. In its resolution 2001/82, the Commission on Human Rights noted with regret the delays thus far encountered in the process, and encouraged the Government of Cambodia to continue to cooperate with the Office.

79. The Special Representative notes with satisfaction that, in the course of his meeting with Prime Minister Hun Sen on 26 June 2001, the Prime Minister stated very firmly his support for the signing of the Memorandum of Understanding at the earliest opportunity. In the light of that assurance from the Prime Minister himself, the Special Representative

hopes that the Memorandum will be signed in the very near future and that it will be in line with the Convention on the Privileges and Immunities of the United Nations and with state and United Nations practice in these matters. The signing would clearly be in the interest of the Cambodian Government and its international reputation, and would enable OHCHR/Cambodia to continue, on a clear and firm legal basis, its valuable work, which appears to be greatly appreciated by both official circles and civil society in Cambodia.

V. Recommendations

80. The Special Representative commends the international community for its interest and support demonstrated at the recent Consultative Group Meetings. He encourages the donor countries to follow through on their pledged assistance, and reiterates his position that protection and promotion of human rights should be taken into account in all assistance programmes.

Land disputes

81. The equitable resolution of land issues is fundamental to the development of a peaceful and harmonious society in Cambodia. The Special Representative urges the Cambodian authorities to set up an effective, efficient and transparent land registration system. He recommends that access to land titles be facilitated for those with legitimate claims to land, and that measures be taken to accelerate the process of securing such titles.

82. While he recognizes that the O'neang community's current situation is one of many similar cases, he appeals to the Government of Cambodia to address the urgent needs of this community and to ensure that such fraudulent and unlawful evictions are prevented in the future.

Natural resources

83. The Special Representative advocates the sustainable use of natural resources. He welcomes the drafting of the forestry and fishery laws and encourages consistency between these laws and the Immovable Property Bill. Moreover, he emphasizes the importance of compliance with environmental laws in any project planning and concession granting.

84. The Special Representative urges the Government of Cambodia to address the continued prevalence of corruption in the logging industry, and to take measures to prevent the perpetrators from further exploiting those natural resources.

85. The Special Representative commends the Government for the reallocation of commercial fishing lots to family-scale fishing, but recommends that attention be given to the implementation of such reforms at the local level.

Demobilization of armed forces

86. In the context of widespread poverty and excessive budgetary allocations to the military, the prospect of demobilization opens the door to a reallocation of resources to areas such as social services, public health and education. The Special Representative encourages the Government and all its partners to properly plan and carry out the full-scale demobilization programme based on the lessons learned through the pilot project. Moreover, he recommends that the donor community follow through on its pledged assistance to this programme in a timely manner.

87. The Special Representative insists on the importance of the collection, safe storage, registration and destruction of weapons and urges the Government and the Parliament to adopt the new arms law as swiftly as possible.

Independence of the judiciary

88. The Special Representative recommends that the Government engage in reform of the Supreme Council of the Magistracy, and hopes that such reform will help to strengthen the judiciary and guarantee its independence.

89. The Special Representative urges the competent Cambodian authorities, with assistance from the international community, to adopt and implement a juvenile justice system in line with basic human rights requirements.

90. The Special Representative recommends that the practices of ministerial circulars and of "out-of-court settlements" be stopped and urges the executive branch to abstain from intervention in the judiciary.

91. The Special Representative appeals to the Government to integrate young trained lawyers into the judiciary and the bar association.

Conditions of detention

92. The Special Representative welcomes the spirit of cooperation on the part of prison officials and the prison administration and notes their willingness to improve conditions of detention. He also notes, however, that corruption remains an obstacle to improvements in the system, and recommends that all appropriate and necessary measures be taken by the Government of Cambodia to curb the prevalence of corruption in the prison system.

93. In terms of health care in prisons, the Special Representative recommends that the Ministry of the Interior and the Ministry of Health coordinate their efforts to provide proper health care to prisoners.

94. The Special Representative recognizes that the serious lack of judges and prosecutors in Cambodia results in excessive pre-trial detention. He therefore urges the Government to increase its budgetary allocation to the judiciary in order to alleviate some of the pressure on the criminal justice system.

Police and mob killings

95. The Special Representative commends the Police Department for its declared willingness to investigate cases of violence committed by police officers. He notes that the incidence of mob killings has increased in recent years and he appeals to the authorities to do everything within their power to prevent the reoccurrence of such incidents.

Commune elections

96. The Special Representative calls for concerted efforts on the part of the National Election Committee, all political parties, non-governmental organizations, both local and international, and the international and donor communities, to guarantee that the commune elections are fair, transparent, and free from violence, and that sufficient and adequate voter information is properly disseminated.

Human trafficking

97. The Special Representative urges the Government of Cambodia to address comprehensively the issue of human trafficking, giving particular attention to such aspects of the problem as the poverty of women and children and their vulnerability to sexual and labour exploitation, the lack of enactment and implementation of legislation for the protection of women and children, the weakness of the judiciary and the resulting prevalence of impunity and corruption, and the need for adequate medical and legal assistance to the victims of this disturbing practice.

Montagnard asylum-seekers from Viet Nam

98. The Special Representative encourages UNHCR to continue to monitor closely the situation of asylum-seekers and to provide assistance to them when needed. Further, he urges the Government to continue to respect its obligations under the Convention relating to the Status of Refugees and, in particular, the obligation of "non-refoulement".

Khmer Rouge Tribunal

99. The Special Representative welcomes the adoption by the National Assembly of the amendment to the draft law relating to the proposed tribunal, and urges the Government of Cambodia to continue its cooperation with the United Nations for the establishment of the Special Tribunal to try those responsible for crimes committed during the Democratic Kampuchea regime.